

Court File No. C70020

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC.

BETWEEN:

AYERSWOOD DEVELOPMENT CORPORATION
Respondent
(APPELLANT)

and

BDO CANADA LIMITED,
as Trustee for the Estate of SIRIUS CONCRETE INC.
Applicant
(RESPONDENT)

FACTUM OF THE APPELLANT

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PART I

1. The Appellant, Ayerswood Development Corporation (“Ayerswood”) appeals from the Order of the Honourable Justice George, sitting in bankruptcy in London, Ontario, dated 14 December 2020. The Respondent is BDO Canada Limited as Trustee for the Estate of Sirius Concrete Inc. (“the Trustee”).
2. The Trustee moved before the Motion Judge for directions and approval of the Trustee’s Fourth Report to the Court. The Motion Judge, for written reasons dated 14 December 2020, ordered:

“1. THIS COURT ORDERS that the Fourth Report of the Trustee to the Court dated March 3, 2020 and the Supplement to the Fourth Report dated October 16, 2020, are approved.

2. THIS COURT ORDERS that the March Payment by Ayerswood Development Corporation in the amount of \$381,578.40 forms part of the estate of Sirius Concrete Inc. and that it is to be distributed to the creditors thereof pursuant to the Claims Administration Procedure and/or scheme of distribution in the BIA.”

Order of 14 December 2020, Appeal Book and Compendium (“ABCO”), p.9

PART II OVERVIEW

3. Sirius Concrete Inc. (“Sirius”) carried on business as a concrete forming company. It made a voluntary assignment in bankruptcy early on Monday, 4 March 2019. One of the projects it was working on at that time was a twelve storey apartment building at 45 Yarmouth Street in Guelph. Ayerswood was the general contractor for that project and had contracted with Sirius for forming the concrete floors and walls of the three underground parking levels and the twelve above ground levels.
4. On 26 March 2019 the Trustee registered a construction lien against 45 Yarmouth for \$485,087.61. On 29 May 2019 the Trustee commenced a Superior Court action in Guelph against Ayerswood and the owner and mortgage holders of 45 Yarmouth. This action sought payment of \$485,087.61 and enforcement of the construction lien. The Trustee pleaded that Sirius had done concrete work to Friday, 1 March 2019, and made an assignment

in bankruptcy on Monday, 4 March 2019. The Trustee particularized its claim as \$158,652.00 for an invoice dated Thursday, 28 February 2019 and \$328,188.65 for the holdbacks.

Construction Lien, ABCO, p.294
Statement of Claim, ABCO, p.280

5. Ayerswood and the other defendants served a statement of defence to the Trustee's action and Ayerswood counter-claimed against the Trustee for restitution of the sum of \$381,578.40. This amount was a payment made by Ayerswood to Sirius on Friday, 1 March 2019, which Sirius gave to the Trustee and then went bankrupt early the next juridical day, Monday, 4 March 2019. Ayerswood claimed that the payment was induced by deceitful misrepresentation by Sirius and that there would be unjust enrichment were the Trustee to retain the funds. Ayerswood claimed for the imposition of a remedial trust over the funds and their return to Ayerswood.

Statement of Defence and Counterclaim, ABCO, p.159

6. The Trustee brought a motion for directions and approval of its Fourth Report. Ayerswood filed affidavit evidence on the motion detailing the deceit practiced upon it by Sirius and the value of the work actually performed by Sirius. The Trustee filed no affidavit

evidence and did not cross-examine on the affidavit filed by Ayerswood. Ayerswood proposed that its claim to restitution of the \$381,578.40 could be addressed by directing that the issue be determined by way of an application, or by directing a trial of an issue, or within the Superior court action in Guelph. The Motion Judge did none of these and proceeded to determine the issue. The appellant raises both the manner in which the Motion Judge proceeded and the factual and legal supportability of the Motion Judge's decision.

PART III FACTS

7. The motion record of the Trustee consisted of a Notice of Motion and the Fourth Report of the Trustee. Later a supplement to the Fourth Report was added. The appendices to the Fourth Report were the Trustee's earlier reports, three earlier court orders in the bankruptcy, Ayerswood's statement of defence in the construction lien action, and a billing summary and copies of invoices from Sirius to Ayerswood. The Trustee's materials contained no affidavit by anyone.

Motion Record of the Trustee, ABCO, pp.19-178

8. The only affidavit evidence before the Court was that of Ayerswood's construction manager, John Camara.

9. The Notice of Motion sought this relief:

“An Order directing the Trustee's action with respect to the pre-bankruptcy payment received by Sirius from Ayerswood Development Corporation on March 1, 2019 and Ayerswood's claim for repayment of same.”

The Fourth Report similarly provided no detail of what directions it was that the Trustee was requesting:

“1.2.1 This constitutes the Trustee's fourth report to the Court in this matter and is filed to:

- (i) Report on the activities of Sirius and Ayerswood prior to the bankruptcy of Sirius; and
- (ii) Obtain direction from the Court with respect to the pre-bankruptcy payment received by Sirius from Ayerswood on March 1, 2019.”

Motion Record of the Trustee, ABCO, pp. 34 and 44

10. Faced with the lack of clarity on what directions the Trustee was seeking Ayerswood sought clarification. Below is reproduced in its entirety the endorsement of the Court on 10 September 2020, which it is submitted elicited no clarification:

“The Trustee's motion seeking directions from the court has been conditionally scheduled to proceed on November 18, 2020 at 10a.m. It's [sic] motion and factum have already been served and filed. At the request of Ayerswood's counsel, Mr. Turton, we are here today for a Case Conference. As I

understand it, Mr. Turton has to this point been somewhat unclear as to what specific directions the Trustee will be seeking and what form the hearing would take (i.e. will it involve a question(s) of law only, or are affidavits and cross-examinations required). He also raises a jurisdictional question arguing that what should happen with the disputed funds should be addressed in the outstanding construction lien litigation in Guelph.

Apart from any jurisdictional question Ayerswood may raise at the Special Appointment, it appears as though the parties are now ready to proceed on November 18th. Counsel have also confirmed that the time allotted is sufficient. In light of that, this is my direction:

1. November 18th, 2020 special appointment is confirmed. The parties will be ready to proceed. 3 hours required.
2. Ayerswood to file responding material on or before October 9, 2020.
3. BDO to file a reply, if any, on or before October 23, 2020.”

Endorsement of 10 September 2020, ABCO, p.18

11. Thereafter Ayerswood served the affidavit of John Camara. It was not cross-examined upon or contradicted by any responding affidavit.
12. The Motion Judge reproduced substantial portions of that affidavit in the reasons, and as it was the only affidavit evidence on the motion it is appropriate to similarly reproduce its contents in this factum:
 - “2. Exhibit A to this affidavit is a true copy of the contract between Sirius Concrete Inc. (“Sirius”) and Ayerswood

dated 14 March 2018. I negotiated this contract with the president of Sirius, David Forbes. The work to be done by Sirius may be generally described as providing the labour, equipment, and materials to construct the concrete structure of the three underground parking levels, the twelve above ground levels, and the roof slab and penthouse for the Building. A few concrete components, such as staircases, were constructed off site, but otherwise Sirius would erect on site the formwork and reinforcing steel, then pour the concrete in order to form the poured reinforced concrete exterior walls, load bearing interior columns and partition walls, interior stairs, elevator shafts, balconies, floor slabs, ceiling slabs, and parking garage levels of the Building. Once the excavation was done, Sirius would be the significant trade on site as until their concrete work for each level was done other trades could not proceed with their work such as plumbing, mechanical, electrical, doors, windows, drywall, and interior finishes (this is not intended to be an exhaustive list of all the other trades and components required to complete a twelve story residential apartment building). This is why it was important that Sirius proceed with its

work efficiently and not be the cause of delaying the completion of the Building.

3. At the time the contract with Sirius was signed, the start date for their work could not be determined as it was dependent upon prior work involving excavation, shoring, and underground services, having been done. One of the aspects of my negotiations with Sirius was the length of time it would take for them to do their work. What was agreed before Sirius started its work was six days per floor. (This refers to the above ground floors, not the parking levels). By August 2018 it was apparent that the work by Sirius was proceeding more slowly than expected. I wanted Sirius to provide a schedule that they would assure me would be kept. Exhibit B to this affidavit is an email from Sirius to me on 4 September 2018 and my response. Sirius was now saying it would take 10 days per floor and as can be seen from my response I reminded them of the six days per floor that had been agreed.
4. The 10 days per floor was not achieved. The autumn of 2018 and January 2019 saw Sirius falling farther behind their promises of when floors would be completed.

5. There was no provision in the contract for how much Sirius would be paid periodically, only a provision for payment in 30 days after invoice and a total price for the work. There was no schedule of values setting out how the total contract price was allocated (for example, so much for each floor completed). Sirius rendered monthly invoices from May to December 2018, which Ayerswood paid.
6. By February 2019 the three underground parking levels, most of the ground floor, and part of the second floor had been formed by Sirius. This was substantially behind the schedule originally discussed with Sirius, and substantially behind the 10 days per floor. Exhibit C to this affidavit is an email exchange between myself and Sirius on 11 and 12 February 2019. I am expressing my considerable concern about the delays. As before, I received assurances from Sirius that they would do something. In past I had thought that paying the invoices of Sirius, and not arguing about the amount charged in relation to the work done, would provide an incentive for them to get the work done at the Building and prioritize this project over others. As February 2019 progressed, and the work by Sirius did not progress, I considered that a different

approach, namely withholding payment until progress was demonstrated, would be appropriate.

7. By the first of March 2019 Ayerswood had not paid the January 2019 invoice of Sirius. The amount of that after deduction of holdback, and with HST, was \$381,578.40.
8. Exhibit D to this affidavit is my email exchange with Sirius on the first of March 2019. In my email of 10:51 a.m. on March first I write that I was at the job site in Guelph and was disappointed that no one from Sirius showed up. A meeting on site had been set up for that morning at which Sirius was to present a detailed plan that would address the problems with their delays and deficiencies. While still on site I received a call from Tomas Waite, the project manager at Sirius, apologizing for their failure to come to the meeting and asking that the meeting be put back to the following Tuesday, March fifth. I was told that they were discussing their plan to get back on track with their work at the Building and needed a bit more time hence the need to delay the meeting until the following Tuesday. At that time Tomas asked me if I could help out by giving them the cheque for the January invoice (this is the \$381,578.40). I expressed my reluctance to do that until I received a

satisfactory plan from them and some confidence it would be adhered to. Tomas assured me that Sirius was committed to providing me with an effective plan and sticking to it so that their work would be back on track and get completed. He told me that if I provided the cheque now that would ensure that Sirius would push things along to get their work done. The assurance of Sirius committing to finishing up the work on an efficient schedule was of huge importance to me as the project was significantly behind schedule, so in reliance on these assurances from Sirius, and believing them, I relented and agreed to release the cheque that day. Sirius sent Tom Waite's girlfriend on that Friday, 1 March, to pick up the cheque and in good faith I gave it to her. I did not suspect any foul play.

9. What I did not know on March first was that Sirius had already been working with its licenced insolvency trustee prior to March first and the documents were prepared, and signed on March first 2019, to put Sirius into bankruptcy. In short, when Sirius dealt with me on March first, and persuaded me to release the cheque to them, Sirius knew it was not going to be doing any further work on the

Building. So when Sirius wrote to me on 1 March 2019 - "Tobin and myself will be making more site appearances to get things on track. Please be patient with us as we work through the issues." – Ayerswood was being lied to. Exhibit E to this affidavit is a copy of the Statement of Affairs of Sirius. While it shows a date of 1 March 2019, the amount of information in that form was self-evidently not compiled only after 12:44 p.m. that day [the time of the above quoted email]. Sirius knew they would not be returning to site and deceived me.

10. I, and hence Ayerswood, was assured by Sirius that if the payment of their January invoice was given to them they would come to the meeting on 5 March 2019 with a concrete plan to solve the problems and would move their work ahead promptly. This was pure deception with the object of getting Ayerswood to release the cheque. I, and hence Ayerswood, believed these lies, and in the belief that Sirius would be not just continuing their work to completion, but promptly to completion, I relented on the decision to withhold the cheque and released to Sirius the cheque of 1 March 2019 for \$381,578.40.

11. If Sirius had told me the truth on March first 2019 that they had already been working with BDO Canada Limited (“the Trustee”) and were going to assign Sirius into bankruptcy and abandon their contract for the Building I never would have released the \$381,578.40 cheque to them; Ayerswood would not have made that payment. The value of the work by Sirius, coupled with the deficiencies in it, and the delay of the completion of the Building that they caused, meant that they had been overpaid for the work they had done. Sirius was not owed \$381,578.40, or any part of that money, and it only received that cheque due to their deceit as I have outlined above.
12. I do not have a copy of the cheque for \$381,578.40 to exhibit to this affidavit. The reason is that the cheque was certified on 1 March 2019, and it was not certified by Ayerswood. I believe it to be a quite reasonable conclusion that either Sirius or the Trustee had that cheque certified to prevent any possibility of Ayerswood stopping payment on it when Ayerswood discovered how it had been deceived. The first of March was a Friday, and the date and time of the bankruptcy of Sirius is Monday, 4 March 2019, at 7:57 a.m.

13. Ayerswood commissioned Truest Quantity Surveyors to report on the value of the work done by Sirius and exhibit F to this affidavit is a copy of their report. I accept as correct, and agree with, the conclusion of this report that Sirius was overpaid by \$702,551.61.
14. If the funds being held by the Trustee, namely the \$381,578.40, plus the 10% holdback attributable to that amount, are not returned to Ayerswood then Ayerswood will have paid for work that was not done and the creditors of Sirius will receive funds that were not earned by Sirius and were obtained through deceit.”

Affidavit of John Camara, ABCO, pp. 181-187

PART IV THE ISSUES

A. Analysis of the Reasons for Decision

13. In paragraph 3 of the Reasons, the Motion Judge sets out what materials have been filed by the Trustee for the motion, namely four reports and a supplementary report. In paragraph 5, the Motion Judge refers to the affidavit evidence on the motion, namely the affidavit of John Camara and reproduces four paragraphs from that affidavit, which the Motion Judge describes as “notable”. In paragraph 6 of the reasons further reference is

made to the evidence of Camara. As the Motion Judge correctly points out in paragraph 11: “no evidence was filed in direct response to Mr. Camara’s affidavit”.

Reasons, ABCO, pp. 12-17

14. In paragraph 4 of the Reasons the Motion Judge sets out the Trustee’s position: “the March Payment [\$381,578.40] constitutes a pre-bankruptcy collection of a receivable and is not recoverable by Ayerswood...any alleged deficiencies in the work performed by Sirius...would only entitle Ayerswood to an unsecured claim...”. In paragraph 5 of the Reasons the Motion Judge sets out Ayerswood’s position: “it [Ayerswood] made the March Payment....only after being deceived by Sirius...”. After referring to evidence in the Camara affidavit, the Motion Judge continues in paragraph 7: “What is described above should, according to Ayerswood, result in the imposition of a remedial constructive trust. The court can, it argues, grant this equitable remedy when funds have been obtained by misrepresentation or deceit, or in a situation of unjust enrichment.”
15. The Motion Judge has thus framed the core legal and factual matter to be resolved and indicated the evidentiary record before

him, noting the absence of evidence from the Trustee responding to the evidence of Ayerswood. How then is the matter resolved?

16. The Motion Judge refers to Ayerswood's position that the matter cannot be resolved on the record before the court [paragraph 8 of the Reasons] and requires a full evidentiary record either by directing a trial of an issue, proceeding by way of application, or dealing with the matter in the context of the Superior Court action in Guelph in which it is the subject of the counterclaim.
17. In paragraph 10 of the Reasons the Motion Judge repeats the position of the Trustee as already set out by him in paragraph 4. In paragraph 11 the Motion Judge sets out, without analysis or reference to the evidentiary record, further points of argument by the Trustee.
18. The reason for the result can be found in paragraph 13 to 17.
19. In paragraph 13, the Motion Judge writes:

“[13] I accept that there is a live question as to whether Ayerswood was manipulated and duped into making the March Payment. Meaning, it might very well have a claim for damages against the principal of Sirius based on what it styles a fraudulent misrepresentation. That is not, however, an issue for BDO to concern itself with, as the bankruptcy scheme is to provide for the orderly distribution of a bankrupt's estate among its creditors (with proven claims), which is precisely what it is attempting to do in this case.”

20. The actual claim asserted by Ayerswood was a proprietary claim asserted against the March Payment not a claim for damages against the principal of Sirius. If successful, the March Payment would be trust money in the hands of the Trustee, not part of the “bankrupt’s estate” and not available for “the orderly distribution...among its creditors”. Paragraph 13 is correct in the sense that if Ayerswood were only making a claim for damages against the principal of Sirius, or even only making a claim for damages against Sirius, this would not be an issue as regards whether the March Payment forms part of the assets of the estate. But that is not what the claim of Ayerswood is, so the reasoning in paragraph 13 does not address the actual issue to be determined.
21. In paragraph 14, without referring to evidence or law, the Motion Judge makes this conclusory statement:

“[14] The reality is there is absolutely nothing to distinguish the character of the March Payment from those made in respect of the prior nine invoices issued by Sirius (and paid by Ayerswood).”

The uncontradicted evidence of John Camara was that there was something definitely to distinguish the character of the March Payment from previous payments: it was induced by deceit and was paid not for the value of work performed but for the promise

of future to work to be performed and in a timely fashion. This was a representation known to be false at the time as Sirius had already prepared its assignment in bankruptcy with the Trustee at the time it was promising Ayerswood it would be continuing work.

22. The Motion Judge states in paragraph 15:

[15] ...I truly believe that to find a trust exists in circumstances like these, would lead to chaos. It would, in its effect, open the door for every payment made pursuant to an invoice rendered (for work completed) prior to the date of bankruptcy to be impressed with a trust. A decision like that runs the risk of upending the purpose of the BIA and undermining its rationale. Were we talking about an anticipatory payment, made for work not yet completed, then this concern would not be as acute; but that is not the nature of this payment, even on Mr. Camara's account.

The Motion Judge sites no authority or evidence in support of the first part of the above paragraph. The second part of the paragraph is not supportable on the uncontradicted evidence of John Camara, which for convenience is quoted in the following paragraph.

23. In paragraphs 11, 13, and 14 of his affidavit, John Camara deposes:

"11. If Sirius had told me the truth on March first 2019 that they had already been working with BDO Canada Limited ("the Trustee") and were going to assign Sirius into bankruptcy and

abandon their contract for the Building I never would have released the \$381,578.40 cheque to them; Ayerswood would not have made that payment. The value of the work by Sirius, coupled with the deficiencies in it, and the delay of the completion of the Building that they caused, meant that they had been overpaid for the work they had done. Sirius was not owed \$381,578.40, or any part of that money, and it only received that cheque due to their deceit as I have outlined above.”

“13. Ayerswood commissioned Truest Quantity Surveyors to report on the value of the work done by Sirius and exhibit F to this affidavit is a copy of their report. I accept as correct, and agree with, the conclusion of this report that Sirius was overpaid by \$702,551.61.

14. If the funds being held by the Trustee, namely the \$381,578.40, plus the 10% holdback attributable to that amount, are not returned to Ayerswood then Ayerswood will have paid for work that was not done and the creditors of Sirius will receive funds that were not earned by Sirius and were obtained through deceit.”

24. As stated in paragraph 5 of the Camara affidavit, there was no schedule of values and the contract itself did not set out an amount for monthly payments. What the evidence set out was that this was not a payment for the value of work completed, as Sirius had by that time been overpaid for the value of its work. The March Payment would have increased the amount of that overpayment. The evidence was that the March Payment was for the promise of the future work to be done.

25. Paragraph 17 of the Reasons sets out an alternative ground for the result:

“[17] Even if I am wrong and have overstated what options are available to Ayerswood, it remains that a trust has not and cannot be established. Ayerswood’s counsel made much of the fact that, first, there was no summary judgment motion (or like proceeding) before the court and, second, that there was no evidence to contradict Mr. Camara’s. Neither is of any consequence. On the face of it, and accepting all of it as true, none of what Mr. Camara deposes could possibly lead to the imposition of a trust. Which means, apart from any deficiencies in Sirius’ work (which is irrelevant for our purposes), what we are talking about here is payment of an outstanding debt. Sirius completed work; invoiced for it; and, consistent with its typical practice and after the passage of a significant period of time, Ayerswood paid it. There is not much else to say about this other than: a debt was owed, which was paid, and any deficiency claim by Ayerswood would simply be addressed as an unsecured claim in the bankruptcy. What Ayerswood is really asking me to do is elevate it above and give it priority to the remaining unsecured creditors of Sirius, including some which are unpaid subtrades of Sirius for whom the March Payment represents a source of recovery.”

26. When properly analyzed, the Motion Judge's reasoning is this: the payment to Sirius was payment of a debt for work completed and the claim of Ayerswood is a claim for deficiencies. The problem with this reasoning is that it is not what the affidavit of Camara states, and there was no admissible evidence in contradiction of that affidavit. The Motion Judge stated a conclusion, without reference to evidence or law in support of it, and then based the result on that conclusion.

B. According Procedural Fairness

27. In a number of decisions this Court has distinguished between law based and fact based motions to finally determine causes of action asserted in a proceeding. The distinction between the two is significant as one is premised upon acceptance of the factual assertions of the claimant as being provable, and the other puts the provability of such factual assertions in issue and to be determined by the trier of fact. As clearly indicated by the endorsement of 10 September 2020, counsel for Ayerswood was explicitly requesting clarification as to which type of proceeding the Trustee was bringing. But no such clarification was provided.

28. Procedural fairness to the responding party requires a clear statement of what the issue is to be determined, what

determination the moving party seeks of that issue, and the basis upon which the moving party asserts that issue should be decided in its favour. That was absent in this case.

29. In the factum on the motion Ayerswood set out the following [which was not addressed by the Motion Judge]:

“4. Section 34(1) of the *Bankruptcy and Insolvency Act* (“BIA”) provides:

A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the court shall give in writing such directions, if any, as it appears proper in the circumstances.

5. The jurisdiction of the court under section 34(1) is the giving of directions, not the determination of substantive issues:

“Moreover, it seems well settled in law that in an application under s. 16 of the Act a court must confine itself, in giving directions, to matters concerning administration of the estate and has no authority to resolve substantive matters in dispute between a trustee and a third party.”

Ward (Bankrupt), Re, 1987 CanLII 7512 (NB QB), <https://canlii.ca/t/gcf1l>

Factum of Ayerswood on the Motion, ABCO, p.261

30. In *Ontario Securities Commission v. Money Gate Mortgage Investment Corporation* [released after the Reasons of the Motion Judge in the case at bar], this Court considered the scope of a motion by a court-appointed receiver for advice and directions. This Court wrote:

“[8] It is important, given the exigencies of receivership proceedings, that a court supervising the receivership decide issues on a summary basis, rather than pursuant to the costlier and more time consuming process of a trial, in cases where a summary process can determine the merits of a dispute fairly and justly. The motion judge did not err, in deciding that this matter could be dealt with summarily by borrowing from the approach applied on motions for summary judgment, an approach designed to ensure that a case is disposed of without a trial only where to do so will result in its fair and just determination.”

“[32] The motion below was for advice and directions, brought in a receivership proceeding. In my view this gave the motion judge the power to decide the merits of the dispute about the validity of the 254 Mortgage, and the entitlement to the Sale Proceeds, in a summary way without a trial, following an approach modelled upon that used on motions for summary judgment. The context and purpose of the receivership support that conclusion.”

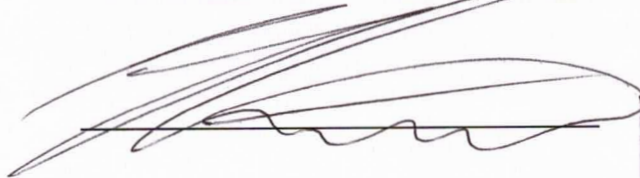
Ontario Securities Commission v. Money Gate Mortgage Investment Corporation, 2020 ONCA 812 (CanLII), <https://canlii.ca/t/jc5l8>

31. It is submitted that there is no principled reason why that reasoning in the *Money Gate* decision should not have application to a bankruptcy. It is submitted that a judge in bankruptcy could, upon an appropriate review of the issues and likely scope of evidence, direct an approach modelled upon that used on motions for summary judgment. This was in effect what Ayerswood proposed. It set out a draft notice of application to deal with the issue, which was a procedurally fair and proportionate way of arriving at a determination.

Part V Order Requested

32. Ayerswood requests that the decision below be set aside with costs here and below. If this Court considers that the available record is sufficient to permit this Court to determine how the issue of the March Payment should proceed procedurally before the Superior Court, then it might provide a direction in that respect, or alternatively that determination can be left to a judge of the Superior Court upon a defined motion for directions in which it is made clear that what is sought is directions as to the procedural method by which the issue of the March Payment will be determined.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED F. SCOTT TURTON,
COUNSEL FOR THE APPELLANT

**CERTIFICATE**

I, F. SCOTT TURTON, counsel for the appellant on the appeal, certifies:

- i) that an order under subrule 61.09(2) is not required, and
- ii) that the appellant on the appeal requires 60 minutes to present its oral argument.



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SCHEDULE A

Ward (Bankrupt), Re, 1987 CanLII 7512 (NB QB),
<https://canlii.ca/t/gcf11>

Ontario Securities Commission v. Money Gate Mortgage Investment Corporation, 2020 ONCA 812 (CanLII), <https://canlii.ca/t/jc5l8>

SCHEDULE B

There is no Schedule B.

AYERSWOOD DEVELOPMENT CORPORATION
RESPONDENT (APPELLANT)

and

BDO CANADA LIMITED et al
APPLICANT (RESPONDENT)

(Short title of proceeding)

Court file no. C70020

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at Toronto

In the Matter of the Bankruptcy of Sirius
Concrete Inc.

FACTUM OF THE APPELLANT

Name, address, telephone and fax numbers of solicitor or party

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